1951

File No. O. Talukdari Tenure Abolition/51
Legal Department
A BRANCH

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~~In~~ Subject:— Opinions under the Bombay Talukdari Tenure Abolition Act, 1949

P. 92 (C)

File No. O. Talukdari Tenure Abolition/51

Gen. 196

585-A

C O N T E N T S.

Legal Department File No. O.Talukdari Tenure /51

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V.M.D./28.6
5a.

L.D.R.I. No.8421 Dt. 27.4.51.

Submitted with reference to the note of the Revenue Department at p.11 ante.

For full facts of the case, please see the letter dated 20.3.1951 of the Collector of Panch Mahals at p. 1 ante. The facts are shortly these -.

S.No. 163 one of the S.Nos. of Laxmipura Village situated in Kalol estate was assigned for grazing purposes. Laxmipura is a Talukdari village which is under the management of the Courts of Wards. At this village the area of Acres. 372 - Gunthas 18 were assigned for grazing purposes. The grazing area was considered to be more than sufficient for the purpose and with a view to growing more food crops the area of 165 acres out of S.No. 163 was leased out to 33 tenants for cultivation on the condition "to grow more food crops" in 1944-45. But the tenants have failed to do so.

The Villagers have now complained to the Revenue Authorities that the remaining Area - Acres. Gts. 207-18 is not adequate for grazing the village cattle. The villagers have now requested the Revenue Authorities to evict the said 33 tenants on the ground that the existing area for grazing is inadequate for the village cattle and the tenants have also not fulfilled the condition of "growing more food crops" on which the land was allotted to them, and to reallot the said area of 165 Acres for grazing purposes as hithertofore. The Collector has been requested at p. 13 ante to report as to whether the existing area of Acres. Gts. 207 - 18 is sufficient for the purpose of grazing or not.

The question for consideration is whether the tenants of 165 Acres of land can be evicted and thereafter this area reallotted for the grazing purposes.

Sd/-

V.M.D./28.6
40.

Legal Department -

Seen and returned. The view taken by the Revenue Department at 'A' on page 12 ante is correct.

Sd/- R.T.K.

Additional Secretary to Government.

U.O. to R.D. No. 6366, dated the 28th May 1951.

V.M.D./28.6
Ga.

Office of the R.L.A.

Tenancies in Taluqdari lands.

Bombay Taluqdari Tenure Abolition Act, s. 5(1) (b) Bombay Land Revenue Code 1879 s. 217.

In Government Circular, Revenue Department No. 9298/45, dated the 7th February 1951, Government have issued the following orders:

"Consequent upon the application of the Bombay Taluqdari Tenure Abolition Act, 1949, to the marginally noted districts, a question regarding the status of cultivators of the lands which be held by taluqdars and their cadets has arisen. After careful examination of the same, Government has decided that the names of the cultivators of such lands should be entered as permanent tenants."

The Taluqdars of Kaira District have made a representation against these orders. They contend that the Taluqdari lands consist of the following categories viz. (a) Bhayati (b) Darbari Chakariyat (c) Darbari Dharmada (d) Salamiya and (e) Darbari; that the lands at (a) are given to Bhayats for their maintenance and they cannot be treated as Taluqdari lands; that the lands at (b) and (c) are given for remuneration for services rendered and that no tenancy rights are therein created and that the cultivators of lands at (c) are purely tenants-at-will. They, therefore, contend that cultivators of these categories of lands, except those of (d), cannot be deemed to be permanent tenants and, therefore, injustice has been done to them in treating all these cultivators as permanent tenants. As the points involved in the representation are complicated Revenue Department has requested the R.L.A. to advise.

The limited purpose of the Bombay Taluqdari Tenure Abolition Act, 1949, is to abolish the taluqdari tenure only. It does not affect the relations of the taluqdar with his inferior holders. Section 5(1)(b) of the Act enacts that :-

a talukdar holding any talukdari land or a cadet of a talukdar's family holding any talukdari land hereditarily for the purpose of maintenance, immediately before the coming into force of this Act, shall be deemed to be an occupant within the meaning of the code or any other law for the time being in force." The term "talukdari land" has been defined and it means land forming part of a talukdari estate and includes land talukdar's family for the purpose of maintenance."

As the talukdar is deemed to be an 'occupant', the inferior holders will be his tenants and their relations will be governed by the ordinary law of the land (cf. pp. 393-401 of Pandekar's Land Tenures, Vol.I). It is possible that some of these inferior holders may be permanent tenants of the talukdar as section 83 of the Bombay Land Revenue Code has been held applicable to the talukdari lands (cf. Amarsinghji v. Ramchhod, 27 Bom. L.R. 267; Jivansinghji v. Bola Chhala, 27 Bom. L.R. 690 and Sursinghji v. Manilal, 32 Bom. L.R. 1679); but the rights of the tenants will have to be inquired into and decided in each case before a decision is arrived at regarding character of the tenancy in accordance with the provisions of the Land Revenue Code. The application of section 217 of the Bombay Land Revenue Code will not make any difference. It has been held by the High Court that the said section does not affect pre-existing contractual rights (Kisan v. Jamnajaya, 39 Bom. L.R. 992; Bilaji v. Nagindas 55 Bom. L.R. 150). The circular at p. 9 ante, therefore, requires modification.

Sd/- J.R.Dhurandhar.
8.6

Remembrancer of Legal Affairs.

U.O. to R.D. No. 9122, dated the 9th June 1951.

V.M.D./26.6
4c.

OPINION OF THE R.L.A.

It appears that prior to the abolition of the Taluqdari tenure the Taluqdars were responsible for the revenue administration of the taluqdari estates and it was for them to arrange for the services useful to themselves in the matter of village administration as well as for services useful to the village community. They were made responsible for the cost of police administration of the taluqdari villages under section 30 of the Gujarat Taluqdars Act, 1888. After the abolition of the taluqdari tenure by the Bombay Taluqdari Tenure Abolition Act, 1949, both the revenue and police administration of taluqdari villages vested in Government. In view of these circumstances the following two questions are raised for the R.L.A's consideration:-

(1) whether the chahriat lands assigned by taluqdars for the remuneration of village servants for service in respect of the administration of the taluqdari village and for service to the village community would now vest in Government;

(2) whether the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, would apply to such lands.

It appears from section 5(1) that all taluqdari lands are liable to the payment of land revenue in accordance with the provisions of the Bombay Land Revenue Code, 1879, and the rules made thereunder. Consequently, the lands given to the village servants for remuneration would be liable to the payment of land revenue irrespective of the fact whether or not such lands could be resumed by the taluqdar. They would not be considered as public lands within the meaning of section 6) for these lands were given to the village servants for remuneration. Whether these lands could be resumed by the taluqdar or not is a question between the taluqdar and these village

servants. It appears from section 30 of the Gujarat Talukdars Act, 1862, that the talukdar was required to pay the remuneration of the village police. If instead of paying such remuneration in cash he assigned lands, ordinarily the lands so assigned could be resumed by the talukdar when the services in respect of which they were assigned have ceased to be demanded. Any how, that is a matter between the talukdar and the village servants and Government is not in the least concerned with it.

As stated above the lands were given to the village servants by the Talukdars for remuneration of service. Consequently, there could be no relationship of landlord and tenant between them and such village servants would not be entitled to claim the benefit of the Bombay Tenancy and Agricultural Lands Act, 1948.

Sd/- J.R. Dhurandhar.

23.6

Superintendent of Legal Affairs.

U.R. to L.D. No. 10093, dated the 25th June 1951.

V.M.D./28.6
Lo.

Office of the R.L.A.

Implementation of Bombay Talundari Tenure Abolition Act, 1949.

R.L.A.'s opinion No. 9321 dated 5.7.1950.

In his opinion No. 9321, dated the 5th July 1950, the R.L.A. has held that forest lands will be included in the term "uncultivated lands" and under section 6 of the Bombay Taluqdari Tenure Abolition Act, 1949 they would vest in Government provided they are not situated within the wantas. It is not clear from these papers whether the forests the management of which has been taken over by the Forest Department are situated within or without the wantas. If they are not situated within the 4he wantas their management would be deemed to have been validly assumed and there would be no objection to continue the management pending the decision of the High Court, subject to the condition that nothing should be done to prejudice the rights of the taluqdar till the matter is decided. The R.D. is, however, requested to ascertain whether the Forests are situated outside the wantas in order to consider whether the management is validly assumed by Government.

Sd/- J.R.Dhurandhar.
13.8

Remembrancer of Legal Affairs.

U.R. to R.D. No. 1303A , dated the 13th August 1951.

V.M.D./28.6
4o.

OFFICE OF THE R.L.A.

Exemption from assessment of Amod, Kerwada and Janiadra Estates.

Bombay Taluqdari Tenure Abolition Act, 1949, sec. 5(2) (a) & (b).

It appears from the Memorandum of the Settlement Commissioner and Director of Land Records that the taluqdari estates of Amod and Kerwada were subjected to survey settlement under Bombay Act VII of 1863 and to the payment of Udhad or fixed udhad jama. So long as the settlement stands, the taluqdars of Amod and Kerwada would be entitled to claim under section 5(2) (a) of the Bombay Taluqdari Tenure Abolition Act that they are entitled to hold their estates on payment of a fixed udhad jama. The absence of a sanad in regard to such settlement will not make any difference. As regards the Janiadra Estates it does not appear that the said estates was subjected to Summary Settlement. The jama was fixed in 1874 and revised in 1904. The revenue and revision settlements were for a period of 30 years at a time. Presumably, the period fixed in 1904 has expired. If it is so, the taluqdar cannot contend that he is entitled to hold the estate under any settlement, agreement or a declaration on payment of a certain amount of jama for a particular period and the estate can be subjected to the payment of full land revenue and section 5(2)(b) of the Act has no application.

Sd/- J.R.Dhurandhar.

25.7

Remembrancer of Legal Affairs.

U.R. to R.D. No. 11633, dated the 25th July 1951.

V.M.D./28.6
40.

L.D.R.I.No.16523 Dt.2.8.51.

Submitted.

In R.L.A.'s opinion No. 12242, dated 31.7.1951, the attention of R.D. was invited to the L.L.A.'s previous opinion No. 11633 dated the 25th July 1951. The R.D. states that the previous opinion is not helpful in deciding the point raised in para. 3 of its office note and has requested specific advice on the point raised therein.

2. The Collector of Ahmedabad has stated that the revision jama settlements in his district are guaranteed for a period of 30 years and he presumes that in cases of Talukdars to whom the jama settlement applies, full assessment cannot be recovered but only the jama can be recovered. On this point, R.D. has raised the question whether this guarantee would fall under sec. 5(2)(b) of the B.T.T.A. Act, 1949. R.D.'s own view is that jama in such cases would be fluctuating and such cases would not be saved by sec.5(2) of the Act but that it would be very difficult to give a general ruling on the point. R.D., therefore, considers that the Collector will have to examine each and every case and see whether the jama payable by each of them is fixed under any agreement of settlement recognized under sec. 23 or under a declaration under sec. 22 of the Gujarat Talukdar's Act. The R.L.A. is, however, requested to advise.

Sd/-

V.M.D./28.8
Ac.

OFFICE OF THE R.L.A.

If the revision Jama Settlements referred to by the Collector, Ahmedabad, are settlements in respect of which Government has made a declaration fixing the Jama for a period of thirty years under section 22(2) of the Gujarat Talukdars' Act, 1971, they would be saved for the period of settlement under section 5(2)(b) of the Bombay Talukdari Tenure Abolition Act, 1949.

Sd/- J.M.Dharandhar.

6.9

Remembrancer of Legal Affairs.

U.O. to R.D. No. 14356 dated 7th September 1951.

V.M.D./26.6
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Office of the R.L.A.

In 21 Bom. 653 it is laid down that where the law creates a limitation, and the party is disabled to conform to that limitation with out any default in him, and he has no remedy over, the law will ordinarily excuse him. In the present case the party is not disabled in any way from putting an application under section 7 of the Act; but as Government has given an undertaking to maintain a status quo till the High Court decides the matter the provisions of section 7 cannot be enforced against the talukdars by rejecting their applications on the ground of limitation. In view of that undertaking talukdars will be entitled to await the decision of the High Court; and Government would be required to afford them reasonable opportunity to put in their claims after the applications in the High Court are decided. After the cases are decided in the High Court, Government may provide for this extension of time by suitable amendments to the Act to regularise executive action.

Sd/- J.R.Bhurandhar.
18.9.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 15003 , dated the 20th September 1951.

V.M.D./26.6
4a.

L.D.R.I.&D. 19626 Dt.21.9.51.

Submitted.

The Collr. of Panch Mahals in his letter at p. 17 ante has asked for Govt's instruction on the points raised in his letter in view of the statusa quo orders of Govt. the Collr. points out that control of Talukdari villages, their records and forests has been assumed on 15.9.1950 and he requests instructions on the following specific points

(a) Whether the charge of villages, record and forests be restored to the Talukdars,

(b) Whether Jama only be recovered or and if so, the surplus recovered should be refunded to them or credited to the P.D. accounts and Revenue Deposits.

(c) Whether the fluctuating L.R. recovered be refunded or credited to .D. Accounts or to Revenue Deposits.

(d) Whether the accounts of the Taluka be closed as if no act was enforced or otherwise and if otherwise how they should be closed.

(e) Whether the preparation of new record be posponed and whether the inquiry regarding compensation claims be continued.

The R.D. proposes to inform him, in view of R.L.A.'s opinion NO. 13034, dt. 13th Aug. 1951, that the status quo as on 29.5.1951 i.e. as on the date of the issue of orders is to be maintained and that anything done before that date would be deemed to have been validly done provided that nothing is done to prejudice the rights of the talukdars till the matter is decided by the High Court. The R.L.A. is shown the papers before the orders are issued. (p.20ante.)

Sd/-

V.M.D./23.6
4c.

OFFICE OF THE R.L.A.

Seen and returned.

Sd/- J.R.Dhurandhar.

26.10
Remembrancer of Legal Affairs.

U.R. to R.D. No. 17133,, dated the 27th October 1951.

V.M.D./28.6
4c.

L.D.R.No.20533 dt. 4.10.51.

Submitted with reference to R.D. note at pp. 20-22 ante.

2. By G.R.R.D. No. 7670/28, dated the 6th April 1932, Govt. had sanctioned the revised Jama Settlements of the taluqdari villages of the Kalol Taluka and Halol and Jhalod Mahals of the Panchmahals District and by para. 3 of the said G.R. it was directed as follows:

> "The revised Jama should be levied with effect from the year 1932-33 by periodic increments in the first, third and fifth years of the settlement, as approved in Govt. Resolution, No. 12342, dated the 13th October 1917, and guaranteed for 30 years."

The Revenue Department considers that this G.R. is obviously a declaration under sec. 22(2)of the Gujarat Taluqdars' Act, 1888 and that the Jama Settlement will be saved for the period of settlement i.e. till 1962-63 under sec. 5(2)(b) of the Bombay Taluqdari Tenure Abolition Act, 1949. The R.L.A. is however, requested to advise.

3. Similarly, the Jama Settlement of the Godhra taluka was sanctioned in G.R., R.D. No. 8394, dated the 15th August 1918 and was fixed for the period ending with the revenue year 1935-1936 when the settlement in most of the villages in the Godhra taluka was to expire. The Revenue Deptt. considers that though these jama rates have been continued with the extension of the period of settlement, they would not be saved under sec. 5(2)(b) of the B.T.T.A. Act as the guaranteed period has long since expired. The R.L.A. is also requested to state whether this view is correct.

Sd/-

V.M.D./28.6
40.

Office of the R.L.A.

The view taken by the Revenue Department in both the cases is correct (vide section 5(2)(b) of the Bombay Talukdari Tenure Abolition Act, and R.L.A. 's opinions Nos. 14356, dated 7.9.51 and 11833, dated 25.7.1951.)

Sd/- J.R.Dhurandhar.

8.11

Remembrancer of Legal Affairs.

U'R. to R.D., No. 17807, dated the 9th November 1951.

V.M.D./28.6
Ac.

2342.
14.11.51.

Submitted with reference to Secy. R.D.'s note at p. 310 ante. The estate of the Thakore of Gangad was taken under the management of Govt. under sec. 28 of the Gujarat Taluqdars Act, 1888, in 1939. On 18.8.1949 the estate was released from that management and taken over under sec. 44 of the Bombay Tenancy and Agricultural Lands Act, 1948. The management under the latter Act was terminated with effect from 5th June 1951. It appears that the father of the present Thakor purchased jewellery worth about Rs. 25,000/- from one Chandulal T. Javeri when the management of the estate had been taken over by Govt. under the Gujarat Taluqdars Act, 1888. The loan has not been paid. Attempts were made by Shri Javeri to recover the dues through the Collector at the time he handed over possession of the Estate and the assets to the Thakor; but without success. In the meanwhile Shri Javeri has filed an suit against the Thakor for recovery of the amount with interest. Shri Javeri now requests that the Collector of Ahmedabad may be asked to make a declaration that the debt incurred by the Thakor's father was reasonable. The R.L.A. is requested to advise.

Sd/-

V.M.D./28.6

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OFFICE OF THE R.L.A.

The view taken by the Assistant Government Pleader, Ahmedabad, that a declaration can even now be made under the proviso to section 29A(2) of the repealed Gujarat Talukdars Act, 1888, is not correct. The Gujarat Talukdars Act, 1888, has been repealed by the Bombay Talukdari Tenure Abolition Act, 1949, and consequently no action under the repealed Act can be taken. It is true that under the proviso to section 17 of the Bombay Talukdari Tenure Abolition Act, 1949, the repeal of that Act shall not in any way be deemed to affect -

(a) The validity, invalidity, effect or consequences of any alienation, etc., or of anything already done or suffered to be done under the said Act;

(b) any obligation or liability already incurred or accrued before such date;

(c) any declaration made or any agreement or settlement recognised, etc., under the provisions of the repealed enactment.

If any declaration in writing had been made under the proviso to section 29A(2) to the Gujarat Talukdars Act that the liability incurred by the Thakore was reasonable, such declaration would have been saved by clause (c) of the proviso to section 17 of the Bombay Talukdari Tenure Abolition Act, 1949. there being no such declaration, the question of resorting to the proviso to section 17 of the Bombay Talukdari Tenure Abolition Act, 1949, as opined by the Assistant Government Pleader, does not arise. It would not, therefore, be competent for the Collector to make any declaration in writing under the proviso to section 29A(2) of the repealed Gujarat Talukdars Act, 1888 as requested by Shri Chandulal T. Zaveri.

Sd/- J.R.Dhurandhar.

19.11.
Remembrancer of Legal Affairs.

U.R. to R.D.No. 18530, dated the 20th November 1951.

V.M.D./28.6
4a.

Office of the R.L.A.

Agreement with Associated Cement Company - Bombay Taluqdari Tenure Abolition Act, 149 - Sects .6 & 7.

It appears that by an agreement dated the 19th July 1948 entered into between the Thakore of Sonipur and the Associated Cement Company Limited the Thakore Saheb has allowed the Company the right to use the waters of the Mahi river including Kaldhera Pool for the purpose of their factory at Sevalia. The company has agreed under the terms of the contract to pay to the Thakore Saheb a sum of Rs. 1000/- per month as rent for the supply of water and the period of contract is for thirty years. Consequent upon the application of the Bombay Taluqdari Tenure Abolition Act, 1949, with effect from 15.8.1949 the Mamlatdar of Thasra informed the Company that the Thakore's right to the water of the river would be terminated andthat a fresh contract would have to be entered into with Government. The Company maintains that the agreement still subsists and it is prepared to pay the rent to Government. The Collector of Kaira considers that the agreement is saved by section 17 clause (c) of the Bombay Taluqdari Tenure Abolition Act, 1949, and the Thakore would be entitled to receive the rent till the expiry of the lease. The R.L.A. is requested to advise whether the contract can subsist even afterthe coming into force of the Bombay Taluqdari Tenure Abolition Act, 1949, and whether the taluqdar will be entitled to any compensation if it is terminate.

2. Section 17, clause (c) of the Bombay Taluqdari Tenure Abolition Act, 1949, provides that the repeal of the said enactment shall not in any way be deemed to affect any declaration made, or any agreement, or settlement recognised any partition confirmed, and any management of the taluqdari estate assumed under the provisions of any of the enactments hereby repealed. The clause "any declaration made or any agreement or settlement recognised" has reference to sectio 5, sub-section (2) , clause (b). The agreement between the Thakore of Sonipur and the Associated Cement Company is not

an agreement of that kind. Consequently section 17 clause (e) has no application.

3. The next question for consideration is whether the contract is saved under the provisions of section 6 of the Bombay Talukdari Tenure Abolition Act. That section inter alia provides that the bed of the sea and of harbours, creeks below high water mark, and of rivers, streams, nullas, lakes, walls and tanks, and all canals and water courses, and all standing and flowing water, etc. which are not situate within the limits of the wantas belonging to a talukdar in a talukdari estate shall except in so far as any rights of any person other than the talukdar may be established in and over the same vest in and shall be deemed to be, with all rights in or over the same or appertaining thereto, the property of the State Government. This section no doubt saves the rights of any person other than the talukdar established in or over the rivers and waters thereof; but the main question is whether the Thakore was competent to enter into a contract of the present nature with the Associated Cement Co. and whether the Company has acquired a legally subsisting right thereunder. The answer to this question appears to be in the negative. The Mahi river is not included in the wanta lands of the Thakore. It flows by the side of his talukdari estate and as section 37 of the Bombay Land Revenue Code, 1879, has been applied to talukdari villages (vide section 33 of the Gujarat Talukdars Act, 1888), a presumption of Government's ownership of the bed of the river and its waters would arise in favour of Government. The Thakore cannot therefore claim the ownership of half the river bed no the waters of the river over that portion. The Thakore was merely a riparian owner and as such he had only a right of user in respect of the water but he had no right of ownership therein. Consequently he had no right to allow it to be used by a non-riparian owner or for the purposes of a non-riparian tenement (vide Secretary of State vs. Janakiramayya , 29 M.L.J. 389); and the contract entered into by him with the Associated Cement

Company is bad in law and ineffective and will not be saved by the provisions of section 6 nor would it be binding on Government.

4. The third question that arises ~~xfax~~ for consideration is is whether if the contract is terminated by Government compensation would be payable to the taluqdar. Section 7 of the Bombay Taluqdari Tenure Abolition Act, 1949, provides for payment of compensation to the taluqdar for extinguishment of his rights under section 6. But as pointed out above, the taluqdar had no rights in the river bed nor in the flowing waters and consequently no compensation will be payable to the taluqdar as none of his rights are extinguished. However, if the taluqdar puts in his claim the Collector will have to decide it after holding an inquiry as provided in section 7 of the Act.

Sd/- J.R.Dhurandhar.

13.12

Remembrancer of Legal Affairs.

U.R. to R.D. No. 19335, dated the 3rd December 1951.

V.M.D./29.6